IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

OP.No. 20409 of 2001(D)

PETITIONER:

V.P.VIJAYAN, VALIYAPARAMBATH HOUSE,
P.O. IRINGATH, VIA, PAYYOLI,
KOZHIKODE DISTRICT.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS:
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1. **STATE OF KERALA, REP. BY THE SECRETARY TO GOVERNMENT LABOUR & REHABILITATION DEPARTMENT, TRIVANDRUM.**

2. **DISTRICT EXECUTIVE OFFICER, KERALA MOTOR TRANSPORTS WORKERS WELFARE FUND BOARD, KOZHIKODE.**

3. **DEPUTY TAHSILDAR, REVENUE RECOVERY, VADAKARA.**

BY GOVERNMENT PLEADER SRI.K.V.MANOJ - R1 & R3
BY ADV. SRI.P.RAMAKRISHNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.20409/2001

ORDER ON CMP. 33109/2001 IN OP. NO.20409/2001

DISMISSED

31.07.2007 **SD/- T.R.RAMACHANDRAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.-P1:- COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER RELATING TO THE YEAR 1987- 88.

EXT.P2:- COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT OTO THE PETITIONER RELATING TO THE YEAR 1988-89.

EXT.P3:- COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER RELATING TO THE YEAR 1989-90.

EXT.P4:- COPY OF THE APPEAL DT. 26.3.01 FILE BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P5:- COPY OF THE PETITION DT. 26.3.01 FILED ALONG WITH EXT.P4.

EXT.P6:- COPY OF THE ORDER DT. 14.6.01 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

/TRUE COPY/

P.A. TO JUDGE

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T.R.RAMACHANDRAN NAIR, J.

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O.P.No.20409 of 2001-D.

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Dated this the 31st day of July, 2007.

J U D G M E N T

The petitioner herein along with one P.Abdul Nazar carried on stage carriage bus service bearing registration No.KLZ 4141 and KRZ 4302 till 1990. The issue relates to the assessment of the welfare fund contribution under the Kerala Motor Transport Workers Welfare Fund Act. According to the petitioner, after the filing of the objection by him to the assessment notice nothing was heard for ten years and he was finally served with a revenue recovery notice showing the amount due. Thereafter he applied for a certified copy of the order on 27.2.2001. Ext.P1 is the order issued by the authority relating to the year 1987-'88 and Exts.P2 and P3 relate to the years 1988-'89 and 1989-'90. He filed an appeal against the same on 26.3.2001 along with a stay petition which are produced in the writ petition as Exts.P4 and P5. The appellate authority has dismissed the appeal as per Ext.P6 order. It was found that as per the Act, the appeal has to be filed within sixty days from the date of receipt of a copy of the order. The appellate authority has relied upon the Judgment in WA.No.2076/2000 in Ext.P6.

2. Attacking the above order the learned counsel for the petitioner submits that the petitioner was never served with the orders of assessment.

Therefore the time for filing appeal is calculated from the date of receipt of the certified copy of the order and hence the appeal ought to have been considered on merit.

3. A statement has been filed on behalf of the 2nd respondent wherein it has been stated that a provisional determination order for the year 1987-'88 for Rs.18,024/- was issued on 3.5.1990 and no objection was filed against the same. Again notice under Section 8(1) for enquiry was issued to the petitioner and the workers on 24.11.1990. Apart from the above period of 1987-'88, the 2nd respondent had issued provisional determination orders for 1988-'89 and 1989-90 on 17.12.1990 and the petitioner had never filed any objection to the same. It is also stated that the workers who had been issued notice were present on the enquiry conducted on 18.11.1991 but the petitioner failed to turn up. It is an admitted case of the 2nd respondent that the assessment orders for 1987-'88, 1988-'89 and 1989-'90 for Rs.18,024/-, Rs.17,642/- and Rs.8,239/- respectively were issued on 24.6.1991 and it was acknowledged by the petitioner on 27.8.1991. It is contended that the appeal filed is barred by limitation. On a direction by this Court to make available the relevant files the 2nd respondent has produced the same for perusal. The final determination order for the year 1987-'88 is dated 17.12.1990 and the petitioner has received the same as evident from the acknowledgment card on 11.2.1991. The final determination order for the year 1988-'89 is dated

24.6.1991 and for the year 1989-'90 also bears the date 24.6.1991. They were sent to the petitioner by registered post and acknowledgment card bears the date 27.8.1991. Therefore, it is clear that the orders were duly served under registered post to the petitioner.

4. The contention raised by the petitioner that the delay ought to have been condoned cannot therefore be accepted. This Court in *Kerala Motor Transport W.W.F. Board v. State of Kerala* (2001(1) KLT 608) and *District Executive Officer v. Abel* (2006(2) KLT 758) has held that the appellate authority has no jurisdiction to condone the delay in filing the appeal. Therefore, the view taken by the 1st respondent in Ext.P6 is not liable to be interfered with and hence the writ petition is dismissed without any order as to costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-